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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MAKOTO YONEYA, JONG-HYUN KIM,
HIROSHI YOKOYAMA, and JUN YAMAMOTO

Appeal 2009-013749
Application 10/070,908
Technology Center 2800

Before KENNETH W. HAIRSTON, MAHSHID D. SAADAT, and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. §§ 6(b) and 134 from the Examiner's rejection of claims 1, 3-7, and 21.

We reverse.

Appellants' invention relates to a nematic liquid crystal display (LCD) having a wide viewing angle (Abstract). Independent claim 1 is illustrative, reading as follows (emphasis added to disputed claim language):

Claim 1: A liquid crystal display device comprising
a pair of substrates, at least one of which is transparent;
a nematic liquid crystal layer between the pair of
substrates;

a group of interdigitated electrodes formed on at least one of the substrates and adapted to apply an electric field to said liquid crystal layer, wherein the electric field has a component substantially parallel to the surfaces of the substrates;

and an alignment layer disposed between the nematic liquid crystal layer and at least one of the substrates,

wherein the alignment layer has been subjected to liquid crystal anchoring treatments in plural directions to form a plurality of liquid crystal in-plane anchoring directions,

the plurality of liquid crystal in-plane anchoring directions of the alignment layer form substantially equal angles relative to one another on the corresponding substrate surface,

a pretilt angle in each of the liquid crystal anchoring directions with respect to the corresponding substrate surface is substantially zero.

Claims 1, 3-7, and 21 stand rejected under 35 U.S.C. § 102(b) as anticipated by Kim (US 6,091,471; Jul. 18, 2000). In formulating the anticipation rejection, the Examiner acknowledges that Kim, which is

directed to an LCD that may employ an In-Plane Switching (IPS) mode, does not expressly disclose, *inter alia*, the presence of interdigitated electrodes. The Examiner concludes, though, that IPS mode liquid crystal cells inherently have a group of interdigitated electrodes (Ans. 4, 9-10). The Examiner relies upon the following references as evidence of this fact (*id.*):

(1) Tomioka (US 6,682,783 B1; Jan. 27, 2004, filed May 4, 1998) (noting that “[i]n the [IPS] active matrix type liquid crystal display apparatus . . . , an electric field [is applied] nearly in parallel to the surface of a substrate using interdigitated electrodes,” (col. 1, ll. 36-40));

(2) Held (US 6,177,972 B1; Jan. 23, 2001) (noting that “[t]he IPS LCD cell is characterized by interdigitated electrodes 3, 4 which lie in substantially the same plane;” (col. 3, ll. 20-22)); and

(3) Broer (US 7,123,319; Oct. 17, 2006, effective 35 U.S.C. § 371 date of Aug. 9, 2002) (noting that the LCDs possess a pair of interdigitated electrodes for in-plane switching the liquid crystal layer (col. 16, ll. 46-48)).

Appellants argue, *inter alia*, that the Examiner erred in concluding that IPS mode LCDs inherently have interdigitated electrodes, and they provide three references to evidence that IPS mode LCDs do not necessarily have to have interdigitated electrodes (*see, e.g.*, App. Br. 3-6).

The Examiner has *not* made any alternative rejections based upon whether it was *obvious* to employ interdigitated electrodes in IPS mode LCDs. As such, the sole issue before us is: Has the Examiner established that IPS mode LCDs necessarily possess interdigitated electrodes?

ANALYSIS

We conclude that the Examiner has not established that interdigitated electrodes were inherently present in IPS mode LCDs. The Examiner has not set forth any technical rationale for why IPS mode LCDs must *necessarily* possess interdigitated electrodes (*see* Ans. 4, 9-11). The Examiner's only evidence for this proposition is the passages of Held, Tomioka, and Broer that were cited hereinabove. These passages, though, at best provide evidence that using interdigitated electrodes for IPS mode LCDs was very well known – not that their use was necessary.² *See In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (noting that “[i]nherency . . . may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient” (citations omitted) (internal quotation marks omitted)).

Because the Examiner has not established a *prima facie* showing of anticipation, we conclude that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 102 as anticipated by Kim. Accordingly, we will not sustain the Examiner's rejection of that claim or the rejection of claims 3-7 and 21, which depend from claim 1.

DECISION

The Examiner's decision rejecting claims 1, 3-7, and 21 is reversed.

REVERSED

² Based upon the respective effective filing dates of the Broer and the present application, Broer may potentially be relied upon to show that which is inherent, but is not available as prior art.

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babc

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